

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

FILED

JUN 16 2011

CLERK, U.S. DISTRICT COURT  
NORFOLK, VA

**WENDELL BARRETT,**

**Plaintiff**

v.

**CIVIL ACTION NO.: 2:10cv546**

**COMMISSIONER OF SOCIAL SECURITY,**

**Defendant.**

***ORDER***

On November 3, 2010, Plaintiff brought this action under the Social Security Act, 42 U.S.C. Section 405(g), seeking judicial review of the decision of the Commissioner of Social Security (Commissioner) finding that Plaintiff was not without fault in receiving and accepting overpayment of Disability Insurance Benefits (“DIB”) under the Social Security Act and that the recovery of the overpayment was not waived.

On April 5, 2011, this matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. Section 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for a report and recommendation. On May 19, 2011, the Magistrate Judge filed his report recommending that the Defendant’s Motion for Summary Judgment be denied and that Plaintiff’s Motion for Summary judgment be denied in part and granted in part and the case be remanded. By copy of the report, each party was advised of their right to file written objections to the findings and recommendations the Magistrate Judge made. The Court has

received no objections to the report and the time for filing the same has expired.

The Court does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge filed May 19, 2011, and it is, therefore **ORDERED** that the Defendant's Motion for Summary Judgment is **DENIED**, the Plaintiff's Motion for Summary Judgment is **DENIED IN PART AND GRANTED IN PART** to the extent that the Commissioner's decision is vacated and remanded to the Commissioner of Social Security pursuant to sentence four of 42 U. S. C. § 405(g) for further proceedings consistent with this Report and Recommendation.

The Clerk shall mail a copy of this final Order to counsel of record for the parties.

**IT IS SO ORDERED.**



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Raymond A. Jackson  
United States District Judge

Norfolk, Virginia  
June 16, 2011